IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 74 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT ON B/H - Applicant(s)
Versus
CHAIRMAN SHAIVSHAKTI KEROSENE HAWKERS - Respondent(s)

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Appearance :
PUBLIC PROSECUTOR for Applicant(s) : 1,
M/S THAKKAR ASSOC. for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/10/2007

ORAL JUDGMENT

By way of this application under section 397 of the Criminal Procedure Code, the petitioner State of Gujarat has challenged the illegality and validity of

the order passed by the learned Sessions Court, Ahmedabad city dated 28-12-99 in criminal appeal No.84/99 below Exh-6 in partly allowing the said appeal and modifying the order passed by the Addl. Collector, Ahmedabad city dated 8-10-99 to the extent of confiscating 50% of the total amount confiscated i.e. Rs.20,266/- in stead of Rs.40,532/-.

2. Proceedings were initiated against the respondent herein under the provisions of the Essential Commodities Act and 12000 litre of kerosene worth Rs.30532/- was seized. By order dated 8-10-99, the Addl. Collector, Ahmedabad city passed an order of confiscating the entire 12000 litre of kerosene worth Rs.30532 as well a sum of Rs.10000 deposited as security, thus, in all Rs.40532/-. Being aggrieved by the order passed by the Addl. Collector, Ahmedabad city dated 8-10-99 confiscating a sum of Rs.40532/- for breach of various provisions of the Essential Commodities Act, the respondent herein preferred appeal before the learned Sessions Court, Ahmedabad city u/s

6(c) of the Essential Commodities Act and by impugned judgment and order dated 28-12-99, the learned Sessions Court partly allowed the said appeal and it was ordered that a sum of Rs.20266 being equivalent to 50% of the total amount confiscated is ordered to be confiscated and the balance amount of Rs.20266 equivalent to balance 50% is ordered to be refunded to the appellant. Being aggrieved by the impugned judgment and order passed by the learned Sessions Court dated 28-12-99 passed in criminal appeal No.84/99, the petitioner State of Gujarat has preferred the present Criminal Revision Application.

3. Shri Pandya, ld. APP has vehemently submitted that in the facts and circumstances of the case, the learned Sessions Court has committed an error in passing the order of confiscation of Rs.20266 only and has materially erred in interfering with the order passed by the Addl. Collector.

4. On the other hand, the learned advocate

appearing on behalf of the respondent original accused has supported the judgment and order passed by the learned Sessions Court and has submitted that when it was found that illegality was committed only to the extent of 3000 litre of kerosene, the learned Sessions Court has rightly interfered with the order passed by the Addl. Collector by confiscating 50% of the amount/goods seized which is not required to be interfered in exercise of powers under the revisional jurisdiction. Under the circumstances, it is requested to dismiss the present applicant.

5. Heard the learned advocates appearing on behalf of the parties.

6. As observed by the learned Sessions Court in para 5, 12000 litre of kerosene worth Rs.30532 was seized and confiscated and in addition thereto, a sum of Rs.10000 deposited as security also came to be confiscated. However, the learned Sessions Court found the order of confiscation as

improportionate to the offence/breach/violation committed by the respondent herein. The learned Sessions Court also observed that the appellant sold 3000 litre of kerosene to an unauthorized person inferring black marketing and so according to law, at the most 3000 litre of kerosene could have been seized and confiscated rather than 12000 litre of kerosene for which there is no allegation of whatsoever nature. It is also further observed by the learned Sessions Court that in addition thereto, the respondent is also required to be penalized for technical breach in relation to the unilateral change in supply programme. Considering the above circumstances, and the breach, when the learned Sessions Court has interfered with the order passed by the Addl. Collector and has passed the order to confiscate a sum of Rs.20266 only and to refund the balance amount namely Rs.20266 equivalent to balance 50%, it cannot be said that the learned Sessions Court has committed any illegality which requires interference of this Court in exercise of revisional

jurisdiction u/s 397 of the Criminal Procedure Code.

7. Under the circumstances, no case is made out to interfere with the order passed by the learned Sessions Court. Hence, this application deserves dismissal and is accordingly dismissed. Rule is discharged. Ad interim relief, if any, granted earlier stands vacated forthwith.

(M.R. Shah, J.)

shekhar/-